IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

WEDNESDAY, THE 4TH APRIL 2007 / 14TH CHAITHRA 1929

Crl.Rev.Pet.No. 157 of 2006(D)

CRA.94/2001 of ADDL. SESSIONS COURT (ADHOC-I), KALPETTA
CC.506/2000 of JUDL.MAGISTRATE OF FIRST CLASS-II, MANANTHAVADY

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REVN. PETITIONER: APPELLANT/ACCUSED

V.UNNIKRISHNAN,
S/O.BALAN, `VENGALASSERY' HOUSE,
ARANCHIURMALA.P.O, ANJUKUNNU AMSOM,
MANANTHAVADY TALUK.

BY ADV. SRI.DEVAN RAMACHANDRAN
SRI.DEEPU LAL MOHAN

RESPONDENTS: COMPLIANANT
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1. K.V.KURUVILA,
S/O.PAULOSE, `KUTTANCHIRA'VEEDU,
VILAMBUKANDAM.

2. STATE OF KERALA,
REP. BY THE PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR MR. M.S. BREEZE
SRI.SELJUM P.EMMANNUEL

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 04/04/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

CRL.M.A.NO. 761/2006 IN CRL.R.P.NO. 157/2006

DISMISSED.

4-4-2007 SD/-K.R.UDAYABHANU,JUDGE

TRUE COPY

P.S.TO JUDGE

K.R. UDAYABHANU, J.

CRL.R.P.NO.157 of 2006

DATED THIS THE 4th April 2007

ORDER

The revision petitioner stands convicted for the offence under Section 138 of the Negotiable Instruments Act and sentenced to undergo simple imprisonment for one month and to pay a compensation of Rs.1,50,000/- vide Section 357(3) Cr.P.C. and in default to undergo simple imprisonment for two months. The prosecution case is that the accused issued the impugned cheque for Rs.1,10,600/- dated 3-9-1997 towards discharge of liability and the same when presented was dishonoured for want of funds in the account of the accused. Lawyer notice was sent. In Ext.P5 reply notice, the accused admitted the liability and sought for time to pay the amount. The evidence adduced in the matter consisted of PWs.1 to 3 and EXts.P1 to P8.

2. The contention raised herein is that the cheque was dishonoured for want of funds as well as on the ground that both the account holders had not signed the cheque. According to the counsel for the revision petitioner as the cheque was drawn

on the joint account, it cannot be held that the account is the one maintained by the accused and hence the offence under Section 138 of the N.I.Act will not be attracted. He has relied on the observation in the decision in **Brewer v. Westminister Bank ltd., 1952(2) All.E.L.R. 650** wherein the matter related to a dispute in between one of the joint account holders and the Bank and hence the observation cited not at all relevant in the present context. In the above cited decision, the Queens Bench has observed that the appellant is not entitled to maintain the proceedings in the absence of the other account holder in the party array either as the plaintiff or as the defendant. I find that in the instant case, the instruction with respect to the operation of the joint account is an arrangement between the joint account holders and the bank and hence I find that it cannot be held that the joint account is not an account maintained by the accused. Dishonour of the cheque for want of funds is the offence, that is intended to be penalised vide Section 138 of the Negotiable Instruments Act. In the circumstances, I find that the contention of the revision petitioner has no merit. Hence, the conviction is confirmed.

Considering the plea of the counsel for the petitioner, the sentence is modified to imprisonment till the rising of the court and the rest of the sentence is confirmed The revision petitioner is granted two months time to pay the amount of compensation. The revision petitioner shall appear before the Judicial First Class Magistrate-II, Mananthavady on 4-6-2007 to receive sentence. The Crl.revision petition is disposed of accordingly.

K.R.UDAYABHANU, JUDGE

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